

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CrI.R.C.No.1747 of 2003

Jayakody

.. Revision Petitioner

vs.

1.Settu
2.Selvam
3.Kasinathan
4.Senthil
5.Karuppiah
6.Devar
7.Loganathan
8.Dinakaran
9.Seeman
10.Ulaganathan
11.Rajangam
12.Minor
13.Ramar @ Kamaraj
14.Sakthivel
15.Sekku @ Gunaseelan
16.Inspector of Police,
Kunnam Police Station,
Perambalur District.
(Cr.No.153/2000)

.. Respondents

Prayer: This Revision has been preferred against the judgment dated 05.09.2003 made in S.C.No.111 of 2002 on the file of the Sessions Court, Perambalur.

For Petitioner : Mr.M.Devianandam
For Respondents : Mr.Siraj (for R1 to R15)

Mr.V.R.Balasubramanian
Addl. Public Prosecutor (for R16)

ORDER

This revision has been preferred against the judgment in S.C.No.111 of 2002 on the file of the Sessions Judge, Perambalur. There are totally 15 accused in this case.

2. The short facts of the prosecution case relevant for deciding this criminal revision are as follows:-

On 27.4.2000 at about 16.00 hours in Kunnam Main Road, due to previous enmity, A1 to A15 armed with deadly weapons and unlawfully assembled with an intention to murder the witness Jayaveeran and A1 assaulted with reaper on his hand causing simple injury and A2 assaulted with aruval on his hand and caused simple injuries and A3 assaulted with reaper and caused greivous injuries and A1 assaulted Ravichandran, who intervened to stop the crisis with reaper on his hand and caused grievous injury, and A5 assaulted with reaper on his right eye brow and A6 kicked with his leg and A7 assaulted with reaper on his left leg and A8 pelted the stones on his left shoulder, right forehead, right hand and A10 fisted with hand on his nose and caused injuries to Ravichandran, who died on 28.4.2000 at about 16.30 hours at hospital and A11 assaulted Jayakodi wife of Ravichandran who intervened at the time when Ravichandran was attacked by the accused and A12 assaulted with reaper on her left hand and A13 assaulted with reaper on her right hand and caused simple injuries and A2 assaulted Subramanian who also intervened to stop the quarrel, with reaper on his left shoulder, A3 assaulted with a reaper on his head and A5 assaulted with a reaper on his left rib and A6 assaulted with hand on his back and A7 assaulted with reaper on his right hand, left thigh, leg and A10 assaulted with hand on his chest and caused injuires to Subramanian and A2 assaulted Latha, wife of Annadurai, with reaper on her leg and A4 assaulted with reaper on her chest and A14 assaulted with reaper on her left leg and A15 pelted the stone on her right hand shoulder and caused injuries to Latha and thereby A1 to A15 were charged under Section 147, 148, 149, 323, 324, 336, 325, 307 and 302 IPC.

3. The judicial Magistrate had taken the case on file as PRC.No.20 of 2001 and on appearance of the accused copies under Section 207 of Cr.P.C., were furnished to the accused and since the case is triable by the Court of Sessions the learned Judicial Magistrate has committed the case to the Court of Sessions Perambalur under Section 209 of Cr.P.C.

4. When charges were framed against the accused as indicated above and when questioned the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.16 were examined and Ex.P.1 to Ex.P.25 were exhibited and M.O.1 to M.O.5 were marked.

5. P.W.1-Jayaveeran in his evidence has deposed that he belongs to Thuthur village and he got married at Kunnam village and he is living there for the past 20 years and that on a wrong information that the 1st accused Settu is having a lady at his house brought from Thuthur Village on 27.4.2000 at about 4.00 pm A1, A2, A3, A6, A7 & A10 assaulted him. He would attribute specific overtact as follows:- A1 assaulted on his hand with a firewood and A2 assaulted with arruval and that the deceased Ravichandran intervened and he was also assaulted by A3, A6, A10, A7 and the deceased Ravichandran was assaulted by A1 on the head and A3 and other accused have assaulted with logs, and P.W.3-Subramainam was assaulted by A6, A1, A5 and A7 with casurina stick and that P.W.2, wife of the deceased Ravichandran, who intervened was assaulted by all the accused. When the injured were taken to Ariyalur hospital, from there, he(P.w.1), deceased Ravichandran and P.W.3-Subramaniam were referred to Tanjore Medical College hospital for treatment considering their serious condition. He, Ravichandran and Subramaniam went to the police station but they were reluctant to take the complaint and the police came to Ariyalur hospital and collected information from them and at that time the condition of Ravichandran was very serious and hence they have not obtained any statement from him and on the same night he, Ravichandran and Subramaniam were taken to Government Hospital at Tanjore. P.W.4 and P.W.2 were taken treatment at Ariyalur Hospital. He would say that he has not assaulted four accused. Ex.P.1 is the complaint preferred by him on 28.4.2000 while he was taking treatment at Tanjore Medical College Hospital along with two other injured and that the injured Ravichandran breathed his last at the hospital itself. He has identified M.O.1-arruval and M.O.2-reaper used by the accused at the time of occurrence.

6. P.w.2 is the wife of the deceased Ravichandran. She would depose that at the time of occurrence A1 had assaulted her husband on the head. A6-Devar had kicked her husband deceased Ravichandran on his private part and that the brother of her husband Subramaniam was attacked by six accused and while she intervened at the time when the accused were attacking her husband Ravichandran, A13-Kamaraj, A12-Minor & A11-Rajalingam have assaulted her on the left hand with wooden stick and that the accused have also attacked Latha and that the injured went to Ariyalur Government Hospital, from there, her husband Ravichandran and P.W.1 were referred to Tanjore Medical College Hospital for further treatment but on the following day at about 5.00 pm her husband Ravichandran breathed his last.

7. P.W.3-Subraminam is a resident of Kunnam. He would depose that on 27.4.2000 at about 4.00 pm while he was in his house his uncle Jayaveeran (P.W.1) was attacked by A1, A10, A7, A2 & A6 with wooden logs and he was also assaulted by A2-Selvam with a reaper on the head which resulted in simple injury on his head. A2 also assaulted him on the flanks and they also assaulted Latha and Jayakodi on their head and he was taken to government hospital at Ariyalur along with other injured persons from where, he(P.W.3), deceased Ravichandran & Jayaveeran (P.W.1) were referred to the Tanjore Medical College hospital and that his brother breathed his last at Tanjore Medical College hospital.

8. P.w.4 is also a resident of Kunnam Village. According to him some two years back one day at about 4.00 pm she heard that some one had assaulted P.W.1 and immediately she went to the place of occurrence and saw, when Ravichandran(deceased) was making an attempt to prevent P.W.1 being attacked by the accused and A1-Settu attacked Ravichandran with a wooden log on his head and also snatched the log from A10-Ulaganathan and assaulted on the head of Ravichandran and A6-Devar had kicked Ravichandran on his private part and A3-Kasinathan, A2-Selvam, A7-Loganathan have assaulted Ravichandran with logs. A14 had bet Ravichandran with a stick and with the same stick A10-Ulaganathan had attacked Karupaiya on his ear and head and also kicked on the private part while she(P.W.4) intervened to prevent the assault on Karupaiya, she was also beaten up by A3, A7 with wooden logs which resulted in simple injury all over her body. Subramaniam was also repeatedly attacked by the accused with wooden log. A10-Ulaganathan, A1-Settu & A7-Devar have also attacked Subramainam. When she intervened to prevent Subramaniam from the attack, A14-Sakthivel attacked her(P.W.4) on the flank and A7-Loganathan attacked her on the leg. Jayakodi also got injury in the occurrence when she made an attempt to prevent her husband from the attack. The injured were referred to the government hospital at Ariyalur from where P.w.1, deceased Ravichandran and Subramaniam (P.w.3) were referred to Tanjore Medical College Hospital and Ravichandran breathed his last without responding to the treatment in the said hospital.

9. P.W.5 has not supported the case of the prosecution. Hence he was treated as hostile witness.

10. P.W.6-Maliga is the sister of the deceased Ravichandran. She would depose that on 27.4.2000 at about 5.00 pm she saw her brother lying on the Kunnam main road with head injury bleeding from his mouth and nose and also P.W.3 and P.W.1 were found there with head injuries and along with Jayakodi(P.W.2) and Latha (P.W.4) all the injured were taken to the government hospital at Ariyalur and Ravichandran, P.W.1 and P.W.3 were referred to Tanjore Medical College Hospital where the following day Ravichandran breathed his last.

11. P.W.7 is also a resident of Kunnam and the father of the deceased Ravichandran, who had handedover M.O.3 and M.O.4 wearing apparels of Ravichandran to the police after his death.

12. P.W.11 is the then Head Constable of Kunnam Police Station, who had registered a case under Kunnam Police Station Cr.No.153/2000 on the basis of Ex.P.1-complaint preferred by P.W.1 while taking treatment at Tanjore Medical College hospital. The case was registered for an offence under Section 323, 324 & 307 IPC and Ex.P.6 is the FIR. He received the information from the hospital at about 16.30 hours on 28.4.2000, that Ravichandran died in Tanjore Medical College Hospital. Hence, he had altered the charge from 323, 324 & 307 IPC to Section 302 IPC and Ex.P.7 is the altered FIR.

13. P.W.15 is the Inspector of Police who took up investigation in this case. After seeing the FIR he has proceeded to the place of occurrence on 28.4.2000 at about 15.00 hours and prepared a rough sketch-Ex.P.17 before the witnesses. He had conducted inquest on the corpse of Ravichandran at Tanjore Medical College hospital from 8.30 am till 11.30 am. He had examined the witnesses and recorded their statements. Ex.P.18 is the inquest report. Under Ex.P.19 he had recovered the wearing apparels of Subramaniam. M.O.5 is the shirt of Subramaniam. On 30.4.2000 at about 11.30 am he had arrested A3-Kasinathan, A6-Devar, A10-Ulaganathan & A14-Sakthivel at about 12.30 pm he has arrested A9-Seeman and brought the accused to the police station and produced before the Court for remand. Under Ex.P.20-letter of requisition, he made a request to send the viscera of the accused for chemical examination. Ex.P.21 is the letter from the Court informing that the viscera has been sent accordingly for chemical examination. He had arrested A2-Selvam on 3.5.2000 at about 9.00 am and recorded his confession statement in the presence of witnesses Paneerselvam and Thangarasu. On the basis of the confession statement the accused had taken him along with the witnesses to a bush near Padayatchi tank and produced an arruval and reaper which was seized by him under a mahazar in the presence of witnesses. Ex.P.22 is the letter of requisition for sending the connected material objects for chemical examination. Ex.P.24 is the biological report and Ex.P.25 is the Serological report and he handed over the case records to his successors P.W.16.

14. P.W.8 is the witness for Ex.P.2-mahazar under which P.W.15 has recovered the wearing apparels of the deceased.

15. P.W.9 is the witness for Ex.P.3-observation mahazar prepared by P.W.15.

16. P.W.10 is the witness for the confession statement of A2 recorded by P.W.15. Ex.P.4 is the admissible portion of the confession statement. Ex.P.5 is the mahazar for the recovery of M.O.1-aruvai and M.O.2-reaper taken out and produced by A2 from the hidden place.

17. P.w.12 is the post-mortem constable who had identified the corpse of Ravichandran to the post-mortem doctor on 29.4.2000 and handed over Ex.P.8 requisition for autopsy and after autopsy he had handed over the corpse to the relatives.

18. P.W.13 is the doctor, who had treated Ravichandran on 27.4.2000 at about 5.40 pm and issued Ex.P.9 copy of the accident register and also treated P.W.1 and issued Ex.P.10 copy of the accident register and also examined P.W.1 and issued Ex.P.11 wound certificate and also examined P.W.3 and issued Ex.P.12 wound certificate for the injury he had sustained. He has examined P.W.4 and issued Ex.P.13 wound certificate.

19. P.W.14 is the doctor, who had conducted post-mortem on the corpse of Ravichandran on 29.4.2000 at about 1.25 pm and issued Ex.P.15-post mortem certificate. Ex.P.16 is the viscera report. The doctor has opined that the deceased would have died due to the injury he had sustained on the head and also due to the injury sustained in his brain.

20. P.W.16 is the successor of P.W.15. He had examined further witnesses and after completing his investigation, he has filed the charge sheet against the accused under Section 147, 148, 323, 324, 336, 325, 307 and 302 IPC on 20.1.2001.

21. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused would deny their complicity with the crime. The accused have examined D.W.1-Muthusamy on their side. After going through the oral and documentary evidence available on records the learned Sessions Judge has held that the charge against the accused have not been proved beyond any reasonable doubt and accordingly acquitted all the accused. Even the State has not preferred any appeal against the judgment of acquittal, P.W.2 the wife of the deceased Ravichandran, viz. Jayakodi has filed this revision petition.

22. Now the point for determination in this revision is whether there is any prima facie case made out against the accused against the charges levelled against them to warrant conviction and sentence under the above provisions of law, by way of interference by this Court after setting aside the judgment of the trial Court in S.C.No.111/2002 on the file of the Sessions Judge, Perambalur?

23.The Point:-

23(a) The learned Sessions Judge has acquitted the accused on the ground that the injuries sustained by the accused in the same occurrence was not explained by the prosecution and on the other ground that the complaint preferred by the accused under Cr.No.152/2000 was not investigated and the investigation officer has failed to find out who are the aggressors before laying the charge sheet against the accused. In support of his contention the learned counsel appearing for the revision petitioner would base his reliance on 1998 SCC (Cri) 1630 (Ram Sunder Yadav and others Vs. State of Bihar). At paragraph 3 of the above said dictum, it has been observed by the Honourable Apex Court as follows:-

"It has now been brought to our notice that earlier a three-Judge Bench of this court had considered the above questions in Bhaba Nada Sarma Vs. State of Assam (1977) 4 SCC 396 : 1977 SCC (Cri) 602 and held that the prosecution is not obliged to explain the injuries on the person of the accused in all cases and in all circumstances and, according to the learned Judges, it is not the law. The same question again came up for consideration before another three-Judge Bench of this Court in Vijayee Singh Vs. State of UP (1990) 3 SCC 190 : 1990 SCC (Cri) 378 wherein it has been held as under:-

In Mohar Rai Case (AIR 1968 SC 1281) it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in lakshmi Singh Case (1976-4 SCC 394) also it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case."

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23(b) For the same proposition of law the learned counsel for the revision petitioner also relied on 2003 (10) SCC 414 (State of MP Vs. Mansingh and others), wherein it has been held as follows:-

"The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses Pws 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to the evidence of the injured witnesses are clearly inconsequential. It is fairly conceded by the learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether the prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render the prosecution version brittle."

The above observation of the Honourable Apex Court will be applicable in all four corners to the fact of the case on hand.

23(c) On behalf of the accused they have examined one Muthusamy as D.W.1. According to him he is an ocular witness. He would state that at the time of occurrence A1 came to the tea stall run by Rajedran P.W.5, and after taking the tea he came out of the tea stall and at that time the deceased Ravichandran and P.W.3, the children of Kannammal questioned A1 where he had brought a lady from Thuthur and kept in his house and the deceased Ravichandran had intimidated A1 that if A1 is beaten, all truth will come out. By saying so, the Ravichandran (Deceased) assaulted A1 on the fore head causing injury. Further P.W.3, P.W.1 and Ravichandran (deceased) have also assaulted A1 and due to the said assault A1 fell unconsciously. So, according to D.W.1, Ravichandran (deceased) has assaulted with a stone on the left fore head of A1 at the time of occurrence causing injury on the head. Apart from the evidence of D.W.1 no other witness was examined to show that who are all the other prosecution witnesses who have caused injuries on the person of the other accused.

23(d) P.w.13 is the government doctor, who had also examined A1 on 27.4.2000 at 8.30 pm. Ex.P.5 is the wound certificate relating to the injuries sustained by A1. It has specifically been stated in Ex.P.5 that the injury seen on the back of the head (injury No.1) and the injury seen on the left eye-brow (Injury No.2) were sutured wounds. Admittedly the occurrence had taken place on 27.4.2000 at about 4.00 pm. A1 was treated by the government doctor only at 8.30 pm. There is absolutely no evidence on record to show that from whom A1 got treatment for the injury he had sustained on the back of the head and on the left eye-brow before getting treatment from P.W.13 because admittedly the above said injuries were sutured wounds. According to D.W.1, the deceased Ravichandran had assaulted with stones on the forehead of A1. So I am of the considered view that the findings of the trial Court that the non-explanation of the injury on A1 is fatal to the prosecution case cannot be sustainable. P.W.13, the doctor, has also examined A6 and issued Ex.D.1 wound certificate and examined A10 and issued Ex.D.2 wound certificate and examined A14 and issued Ex.D.3 wound certificate and also examined A3 and issued Ex.D.4 wound certificate. There is no evidence on the side of the accused to show that A6, A3, A10 and A14 have sustained injury at the hands of the prosecution witnesses. Under such circumstances, I am of the view that the findings of the learned Sessions Judge that non-explanation of the injuries to the above said accused by the prosecution is fatal to the case of the prosecution cannot be sustainable.

23(e) The contention of the learned counsel for the respondents that it is seen from the evidence of D.W.1 itself that the deceased Ravichandran alone had attacked A1 with a stone on the forehead, so the deceased alone seems to be the aggressor of the occurrence and not the accused, cannot also be sustainable because according to P.W.13, the doctor, there were two sutured wounds seen on the back of the head and left eye-brow of A1. It is not in evidence that from whom A1 got treatment before getting treatment for the above said two sutured injuries, from P.W.13. On the other hand it is seen from medical witness P.W.13 and the copy of the accident register issued by P.W.13 for P.W.1, P.W.3, P.W.4 and their wound certificates under Ex.P.11, Ex.P.12, Ex.P.13 respectively, the deceased Ravichandran was also examined before his death by P.W.13 the doctor. Ex.P.9 is the copy of the accident register given for the injuries sustained by Ravichandran which shows that Ravichandran had sustained an incised wound on the back side of the head measuring 5 x 5 cm and a contusion on the nose measuring 3 x 3 cm and had bleeding injury from both the nostrils. P.W.2 had also sustained a contusion measuring 4 x 4 cm on the centre of her head besides simple injury on her left hand, right hand and dorsal aspect of her left hand. P.W.1 has also sustained injury on the centre of the head measuring 5 x 2 cm and also an incised wound on the right ring finger and left shoulder. P.W.3 has also sustained an incised wound measuring 5 x 1 cm and a contusion measuring 5 x 4 cm and another contusion on her left armpit measuring 5 x 4 cm and simple injuries on the left forearm, left elbow, left thigh and left

ear. P.W.4 has also sustained injuries on the right hand and left ankle. The learned counsel for the revision petitioner would admit that the overtact attributed by the prosecution witnesses is only against A1 to A3, A5 to A7, A10 to A14 and there is no overtact attributed against A4, A8, A9 & A15. Under such circumstances, I am of the view that the findings of the learned trial judge that the charges levelled against the accused are not proved requires interference from this Court. Point is answered accordingly.

24. In the result, the revision is allowed in part and the judgment of the trial Court in S.C.No.111 of 2002 on the file of the Sessions Judge, Perambalur is set aside against A1 to A3, A5 to A7 and A10 to A14 and the same is confirmed against A4, A8, A9 & A15. The case is remanded to the trial Court for de-nova trial against A1 to A3, A5 to A7, A10 to A14. Trial Court is directed to dispose of the matter in accordance with law within a period of two months from the date of receipt of records. It is made clear that the trial Court shall not be carried away by any of the observation made in this revision. The accused may also be permitted to let in evidence, if any, on their side.

ssv

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge,
Perambalur.

2.The Inspector of Police,
Kunnam Police Station,
Perambalur.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.Siraj & Siraj, Advocate Sr.No.25071.

RSM(CO)

dcp/25.4.07

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